

1 BEFORE THE BOARD OF MEDICAL EXAMINERS

2 IN THE STATE OF ARIZONA

3
4 In the Matter of

5 MARK KENNETH PATTON, M. D.

6 Holder of License No. 23562
7 For the Practice of Medicine
8 In the State of Arizona.

No. 99F-12625-MDX

No. 96F-9428-MDX

CONSENT AGREEMENT TO ORDER

9 By mutual agreement and understanding, between the Arizona Board of Medical
10 Examiners (hereafter "Board") and MARK KENNETH PATTON, M. D. (hereafter
11 "Respondent") the following disposition of this matter is agreed to.

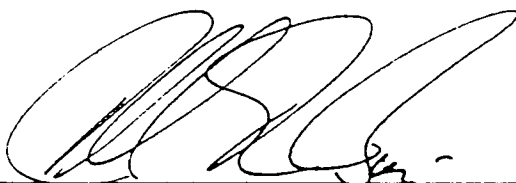
- 12 1. Respondent acknowledges that he has read this Consent Agreement and the
13 stipulated Findings of Fact, Conclusions of Law and Consent Order; and, he is
14 aware of and understands the content of this document.
- 15 2. Respondent understands that by entering into this Consent Agreement for the
16 issuance of the foregoing Consent Order, Respondent voluntarily relinquishes any
17 rights to a hearing or judicial review in state or federal court on the matters alleged
18 or to challenge this Consent Agreement and the Consent Order in its entirety as
19 issued by the Board and waives any other cause of action related thereto or arising
20 from said Order.
- 21 3. Respondent acknowledges and understands that this Consent Agreement and the
22 Consent Order will not become effective until approved by the Board and signed by
23 its Executive Director.
- 24 4. All admissions made by Respondent are solely for final disposition of this matter
25 and any subsequent related administrative proceedings or civil litigation involving
the Board and Respondent. Therefore, said admissions by Respondent are not

1 intended or made for any other use, such as in the context of another state or
2 federal government regulatory agency proceeding, civil or criminal court
3 proceeding, in the State of Arizona or any other state or federal court.

- 4 5. Respondent acknowledges and agrees that, upon signing this agreement, and
5 returning this document (or a copy thereof) to the Board's Executive Director,
6 Respondent may not revoke his acceptance of the Consent Agreement and
7 Consent Order or make any modifications to the document, although the Consent
8 Agreement has not yet been accepted by the Board and issued by the Executive
9 Director. Any modifications to this original document are ineffective and void unless
10 mutually approved by the parties.
- 11 6. Respondent further understands that this consent Agreement and Consent Order,
12 once approved and signed, shall constitute a public record document, which may
13 be publicly disseminated as a formal action of the Board.
- 14 7. If any part of the Consent Agreement and Consent Order is later declared void or
15 otherwise unenforceable, the remainder of the Consent Order in its entirety shall
16 remain in force and effect.

17 
18 MARK KENNETH PATTON, M. D.

Reviewed and accepted this
28th day of April 2000.

19 
20
21 CHARLES BURI, Attorney at Law
22 (Counsel for Dr. Patton)

Reviewed and approved as to form
this 28th day of March 2000.

23 ...

24 ...

25 ...

1 **CASE NO. 96F-9428-MDX**

2
3 1. The Findings of Fact and Conclusions of Law set forth in the Board's Findings of
4 Fact, Conclusions of Law and Order dated February 3, 1999, are hereby affirmed without
5 amendment, and are incorporated herein by reference.

6 **CASE NO. 99F-12625-MDX**

7 **FINDINGS OF FACT**

8 **PROCEDURAL HISTORY**

9 *Findings of Fact No. 1 through 9 refer to Investigative Case No. 96F-9428-MDX*
10 *which was proceeding when Investigative Case No. 99F-12625-MDX arose.*

11 1. On January 19, 1996, during the pendency of Investigative Case No. 96F-9428-
12 MDX, the Board and Dr. Patton entered into an Interim Stipulation and Order ("Interim
13 Order"), which became effective on February 7, 1996. The Interim Order directed as
14 follows:

15 "1. MARK K. PATTON, M. D. shall have an adult female present when he
16 examines any patient between the ages of 0 and 18 years of age.

17 2. Dr. PATTON shall legibly write the name of the adult female in the
18 patient's chart at the time of the examination." *Dr. Patton's Exhibit No. 1, p.*

19 2.

20 2. The Stipulation on which the Interim Order was based stated in pertinent part:

21 "MARK K. PATTON, M. D. acknowledges that any violation of this Order
22 constitutes unprofessional conduct within A.R.S. § 32-1401(25)(r), and may
23 result in disciplinary action pursuant to A.R.S. § 32-1451." *Dr. Patton's*
24 *Exhibit No. 1 p. 1.*

25 3. On February 3, 1999, the Board entered Findings of Fact, Conclusions of Law
and an Order of Probation in Investigative Case No. 96F-9428-MDX.

4. On February 5, 1999, the Attorney General on behalf of the State of Arizona filed
a Motion For Review of the Board's Findings of Fact, Conclusions of Law and Order. The

1 motion argued that the penalty and terms imposed by the Board were insufficient to
2 protect the public's health, safety and welfare, and that the Order of Probation was not
3 justified by the evidence.

4 5. On February 18, 1999, Dr. Patton filed a Motion for Rehearing and a Motion to
5 Strike the State's Motion for Review.

6 6. On March 26, 1999, at its meeting, the Board granted the State's Motion for
7 Review and allowed the State "the opportunity to present new evidence for the limited
8 purpose of reviewing the discipline issued in this matter." *Board's Order of Referral to the
9 Office of Administrative Hearings, p. 1 (October 6, 1999).*

10 7. On April 14, 1999, the Board issued an Order granting the State's Motion for
11 Review and denying Dr. Patton's Motion for Rehearing and Motion to Strike.

12 8. On September 3, 1999, the State filed an Amendment to Motion for Review.

13 9. On September 24, 1999, the Board with the parties present reviewed
14 Investigative Case No. 96F-9428-MDX, and on October 6, 1999, issued this Order:

15 "IT IS HEREBY ORDERED that the State's claim of new evidence is referred
16 to the Office of Administrative Hearings for review and consideration and that
17 the Office of Administrative Hearings shall provide the Board with a
18 recommended Order in this matter." *Board's Order of Referral to the Office of
19 Administrative Hearings, p. 1 (October 6, 1999).*

20 10. On October 18, 1999, the Board issued a Notice of Hearing in Investigative
21 Case No. 96F-9428-MDX, scheduling a hearing at the Office of Administrative Hearings.

22 THE COMMENCEMENT OF INVESTIGATIVE CASE NO. 99F-12625-MDX

23 11. In a letter dated March 16, 1999, the chief executive officer of a Phoenix
24 hospital notified the Board that the hospital had reviewed the health records of three
25 children examined by Dr. Patton in an attempt to verify Dr. Patton's compliance with the
Interim Order. The letter stated that the hospital was unable to confirm compliance with the
Interim Order from the health records because there was no evidence in any of the
progress notes that an adult female was present during any of the three examinations.

12. Based upon this information, Board staff initiated a separate investigation into
Dr. Patton's compliance with the Interim Order and subpoenaed the applicable medical

1 records of the children from the hospital, along with additional peer review documents. In
2 the opinion of the Board's investigators, these records showed that Dr. Patton had not
3 complied with the Interim Order in all patient examinations.

4 13. On April 7, 1999, Board staff subpoenaed the records from the first hospital and
5 three additional hospitals showing the names and medical record numbers of all patients,
6 ages zero to 18 years, seen or treated by Dr. Patton, from November 1, 1998, through
7 March 1, 1999, including all patients for whom Dr. Patton served as either attending or
8 consulting physician and saw or treated while covering for another pediatrician.

9 14. In addition, Board investigators conducted three random surveys of patient
10 records at Dr. Patton's medical office.

11 THE ALLEGED VIOLATIONS OF THE INTERIM ORDER

12 15. On October 4, 1999, the Board issued a Complaint and Notice of Hearing
13 alleging that Dr. Patton had failed to comply with the Interim Order in 37 occasions which
14 constituted acts of unprofessional conduct pursuant to A.R.S. § 32-1401(25)(q) and -
15 (25)(r). A disciplinary proceeding was commenced pursuant to A.R.S. §§ 32-1451 and 41-
16 1092 through 41-1092.12.

17 16. The allegations in the Complaint concern 37 patients. Seven of those patients
18 were seen in a hospital, and thirty were seen in Dr. Patton's medical offices.

19 17. Two male patients and four female patients were seen at Phoenix Children's
20 Hospital between December 7, 1998, and February 12, 1999, and a female patient was
21 seen at St. Joseph's Hospital and Medical Center on November 13, 1997.

22 18. The thirty office charts are of male patients who were seen after February 3,
23 1999, with the exception of M. M., a male patient who was seen on March 9, 1998, and N.
24 W., a female patient who was seen on July 14, 1999.

25 19. The patient charts submitted at the hearing show that Dr. Patton did not write
the name of the adult female, who was present during the examination, in the patient's
chart on 28 occasions. On five occasions, Dr. Patton did not write legibly the name of the
adult female in the patient's chart at the time of the examination. On one occasion, he did
not write the adult female's name in the patient's chart until six weeks after the
examination. Seven of these 34 examinations occurred prior to February 3, 1999.

NOT WRITING THE ADULT FEMALE'S NAME IN THE CHART

1 20. Dr. Patton did not write the name of an adult female in the following 28 patient
2 charts¹:

- 3 1. March 9, 1998, examination of patient M. M.
- 4 2. December 29, 1998, examination of patient A. R.
- 5 3. January 17, 1999, examination of patient L. C.
- 6 4. March 8, 1999, examination of patient J. R.
- 7 5. March 10, 1999, examination of patient I. P.
- 8 6. April 13, 1999, examination of patient G. P.
- 9 7. April 19, 1999, examination of patient G. P.
- 10 8. April 22, 1999, examination of patient I. P.
- 11 9. April 26, 1999, examination of patient J. S.
- 12 10. May 4, 1999, examination of patient N. A.
- 13 11. May 12, 1999, examination of patient I. P.
- 14 12. June 2, 1999, examination of patient J. P.
- 15 13. June 9, 1999, examination of patient J. S.
- 16 14. June 9, 1999, examination of patient J. R.
- 17 15. June 14, 1999, examination of patient E. L-P.
- 18 16. June 28, 1999, examination of patient J. R.
- 19 17. June 29, 1999, examination of patient E. L-P.
- 20 18. July 6, 1999, examination of patient C. P.
- 21 19. July 6, 1999, examination of patient C. H.
- 22 20. July 6, 1999, examination of patient F. H.
- 23 21. July 9, 1999, examination of patient D. M.
- 24 22. August 4, 1999, examination of patient J. L.
- 25 23. August 9, 1999, examination of patient S. M.
- 26 24. December 7, 1998, examination of patient J. R.
- 27 25. January 16, 1999, examination of patient C. R.
- 28 26. January 17, 1999, examination of patient T. V.
- 29 27. February 25, 1999, examination of patient C. S.

¹ This listing follows the sequential order of the Board's Complaint.

1 28. March 23, 1999, examination of patient E. Z.

2 21. Paragraph 12(A) of the Complaint alleges that Dr. Patton examined patient M.
3 M. on March 9, 1998, without an adult female being present. Dr. Patton testified that the
4 mother of the patient was present, but he did not write her name in the chart.

5 22. Mrs. J. M., the mother of M. M., testified she was present during the
6 examination. She testified as follows:

7 "Q.: When you went to Maryvale Pediatrics with your son [on March 9, 1998]
8 did you ask to be in the examination room, or were you asked to be in the
9 room?

10 A.: I was not asked to be in the room. I've always been in the room with my
11 son. I do not let my son unattended.

12 ***

13 Q.: ...Do you remember if there was anyone else in the examination room
14 with you like a nurse or medical assistant?

15 A.: Yes. There was a nurse there. The one that checked on M. M.

16 Q.: Was she there at the same time that you and Dr. Patton were there?

17 A.: No, huh-uh. She went out after Dr. Patton went in.

18 Q.: So during the examination of M. M. it was only yourself and Dr. Patton?

19 A.: Yes, uh-huh." *Hearing Transcript ("H. T.") p. 350, In. 11 through p. 351,*
20 *In. 12.*

21 23. Paragraph 12(B) of the Complaint alleges that Dr. Patton examined patient A.
22 R. on December 29, 1998, without an adult female being present. Dr. Patton testified that
23 the mother of the patient was present, but he did not write her name in the chart. Mr.
24 Palmer, the Board's investigator, attempted to contact the parents of A. R. to verify the
25 mother's presence, but he was unable to locate them.

1 24. Paragraph 12(C) of the Complaint alleges that Dr. Patton examined patient L.
2 C. on January 17, 1999, without an adult female being present. Dr. Patton testified that the
3 mother of the patient was present, but he did not write her name in the chart. Mr. Palmer
4 attempted to contact the parents of L. C. to verify the mother's presence, but he was
unable to locate them.

5 25. Paragraph 12(D) of the Complaint alleges that Dr. Patton examined patient J. R.
6 on March 8, 1999, without an adult female being present. Dr. Patton testified that a parent
7 was present, but he did not write the name in the chart. J. R. was a male patient, and this
8 visit occurred after the Board entered its Findings of Fact, Conclusions of Law and Order
on February 3, 1999.

9 26. Paragraph 12(E) of the Complaint alleges that Dr. Patton examined patient I. P.
10 on March 10, 1999, without an adult female being present. Dr. Patton testified that a
11 parent was present, but he did not write the name in the chart. I. P. was a male patient,
12 and this visit occurred after the Board entered its Findings of Fact, Conclusions of Law and
Order on February 3, 1999.

13 27. Paragraph 12(F) of the Complaint alleges that Dr. Patton examined patient I. P.
14 on April 1, 1999, without an adult female being present. Dr. Patton testified he did not see
15 this patient on that date. The patient was seen by another physician, Harry Broome, M. D.

16 28. Paragraph 12(G) of the Complaint alleges that Dr. Patton examined patient G.
17 P. on April 13, 1999, without an adult female being present. Dr. Patton testified that a
18 parent was present, but he did not write the name in the chart. G. P. was a male patient,
19 and this visit occurred after the Board entered its Findings of Fact, Conclusions of Law and
Order on February 3, 1999.

20 29. Paragraph 12(H) of the Complaint alleges that Dr. Patton examined patient G.
21 P. on April 19, 1999, without an adult female being present. Dr. Patton testified that a
22 parent was present, but he did not write the name in the chart. G. P. was a male patient,
23 and this visit occurred after the Board entered its Findings of Fact, Conclusions of Law and
Order on February 3, 1999.

24 30. Paragraph 12(I) of the Complaint alleges that Dr. Patton examined patient I. P.
25 on April 22, 1999, without an adult female being present. Dr. Patton testified that a parent
was present, but he did not write the name in the chart. I. P. was a male patient, and this

1 visit occurred after the Board entered its Findings of Fact, Conclusions of Law and Order
2 on February 3, 1999.

3 31. Paragraph 12(J) of the Complaint alleges that Dr. Patton examined patient J. S.
4 on April 26, 1999, without an adult female being present. Dr. Patton testified that a parent
5 was present, but he did not write the name in the chart. J. S. was a male patient, and this
6 visit occurred after the Board entered its Findings of Fact, Conclusions of Law and Order
on February 3, 1999.

7 32. Paragraph 12(K) of the Complaint alleges that Dr. Patton examined patient N.
8 A. on May 4, 1999, without an adult female being present. Dr. Patton testified that a parent
9 was present, but he did not write the name in the chart. N. A. was a male patient, and this
10 visit occurred after the Board entered its Findings of Fact, Conclusions of Law and Order
on February 3, 1999.

11 33. Paragraph 12(L) of the Complaint alleges that Dr. Patton examined patient I. P.
12 on May 12, 1999, without an adult female being present. Dr. Patton testified that a parent
13 was present, but he did not write the name in the chart. I. P. was a male patient, and this
14 visit occurred after the Board entered its Findings of Fact, Conclusions of Law and Order
on February 3, 1999.

15 34. Paragraph 12(M) of the Complaint alleges that Dr. Patton examined patient J.
16 P. on June 2, 1999, without an adult female being present. Dr. Patton testified that a
17 parent was present, but he did not write the name in the chart. J. P. was a male patient,
18 and this visit occurred after the Board entered its Findings of Fact, Conclusions of Law and
Order on February 3, 1999.

19 35. Paragraph 12(N) of the Complaint alleges that Dr. Patton examined patient J. S.
20 on June 9, 1999, without an adult female being present. Dr. Patton testified that a parent
21 was present, but he did not write the name in the chart. J. S. was a male patient, and this
22 visit occurred after the Board entered its Findings of Fact, Conclusions of Law and Order
on February 3, 1999.

23 36. Paragraph 12(O) of the Complaint alleges that Dr. Patton examined patient J.
24 R. on June 9, 1999, without an adult female being present. Dr. Patton testified that a
25 parent was present, but he did not write the name in the char. J. R. was a male patient,

1 and this visit occurred after the Board entered its Findings of Fact, Conclusions of Law and
2 Order on February 3, 1999.

3 37. Paragraph 12(P) of the Complaint alleges that Dr. Patton examined patient E. L-
4 P. on June 14, 1999, without an adult female being present. Dr. Patton testified that a
5 parent was present, but he did not write the name in the chart. E. L-P. was a male patient,
6 and this visit occurred after the Board entered its Findings of Fact, Conclusions of Law and
7 Order on February 3, 1999.

8 38. Paragraph 12(Q) of the Complaint alleges that Dr. Patton examined patient D.
9 G. on June 28, 1999, without an adult female being present. Dr. Patton testified that he did
10 not examine the patient on that date but had a psychiatric consultation (he made a
11 psychiatric referral). D. G. was a male patient, and this visit occurred after the Board
12 entered its Findings of Fact, Conclusions of Law and Order on February 3, 1999.

13 39. Paragraph 12(R) of the Complaint alleges that Dr. Patton examined patient J. R.
14 on June 28, 1999, without an adult female being present. Dr. Patton testified that a parent
15 was present, but he did not write the name in the chart. J. R was a male patient, and this
16 visit occurred after the Board entered its Findings of Fact, Conclusions of Law and Order
17 on February 3, 1999.

18 40. Paragraph 12(S) of the Complaint alleges that Dr. Patton examined patient E. L-
19 P on June 29, 1999, without an adult female being present. Dr. Patton testified that a
20 parent was present, but he did not write the name in the chart. E. L-P. was a male patient,
21 and this visit occurred after the Board entered its Findings of Fact, Conclusions of Law and
22 Order on February 3, 1999.

23 41. Paragraph 12(T) of the Complaint alleges that Dr. Patton examined patient C.
24 P. on July 6, 1999, without an adult female being present. Dr. Patton testified that a parent
25 was present, but he did not write the name in the chart. C. P. was a male patient, and this
visit occurred after the Board entered its Findings of Fact, Conclusions of Law and Order
on February 3, 1999.

42. Paragraph 12(U) of the Complaint alleges that Dr. Patton examined patient C.
H. on July 6, 1999, without an adult female being present. Dr. Patton testified that a parent
was present, but he did not write the name in the chart. C. H. was a male patient, and this

1 visit occurred after the Board entered its Findings of Fact, Conclusions of Law and Order
2 on February 3, 1999.

3 43. Paragraph 12(V) of the Complaint alleges that Dr. Patton examined patient F.
4 H. on July 6, 1999, without an adult female being present. Dr. Patton testified that a parent
5 was present, but he did not write the name in the chart. F. H. was a male patient, and this
6 visit occurred after the Board entered its Findings of Fact, Conclusions of Law and Order
on February 3, 1999.

7 44. Paragraph 12(W) of the Complaint alleges that Dr. Patton examined patient D.
8 M. on July 9, 1999, without an adult female being present. Dr. Patton testified that a parent
9 was present, but he did not write the name in the chart. D. M. was a male patient, and this
10 visit occurred after the Board entered its Findings of Fact, Conclusions of Law and Order
on February 3, 1999.

11 45. Paragraph 12(X) of the Complaint alleges that Dr. Patton examined patient J. L.
12 on August 4, 1999, without an adult female being present. Dr. Patton testified that a parent
13 was present, but he did not write the name in the chart. J. L. was a male patient, and this
14 visit occurred after the Board entered its Findings of Fact, Conclusions of Law and Order
on February 3, 1999.

15 46. Paragraph 12(Y) of the Complaint alleges that Dr. Patton examined patient S.
16 M. on August 9, 1999, without an adult female being present. Dr. Patton testified that a
17 parent was present, but he did not write the name in the chart. S.M. was a male patient,
18 and this visit occurred after the Board entered its Findings of Fact, Conclusions of Law and
Order on February 3, 1999.

19 47. Paragraph 13(A) of the Complaint alleges that Dr. Patton examined patient J. R.
20 on December 7, 1998, and that he failed to write the name of the adult female in the chart.
21 Dr. Patton testified that the mother was present, but he omitted to write her name in the
chart. Mr. Saldate, the Board's investigator, verified that the mother was present.

22 48. Paragraph 13(B) of the Complaint alleges that Dr. Patton examined patient C.
23 R. on January 16, 1999, and that he failed to write the name of the adult female in the
24 chart. Dr. Patton testified that the mother was present, but he omitted to write her name in
25 the chart. Mr. Palmer, the Board's investigator, verified that the mother was present.

1 49. Paragraph 13(C) of the Complaint alleges that Dr. Patton examined patient T.
2 V. on January 17, 1999, and that he failed to write the name of the adult female in the
3 chart. Dr. Patton testified that the mother was present, but he omitted to write her name in
4 the chart. Mr. Palmer verified that the mother was present.

5 50. Paragraph 13(D) of the Complaint alleges that Dr. Patton examined patient C.
6 S. on February 25, 1999, and that he failed to write the name of the adult female in the
7 chart. Dr. Patton testified that a parent was present, but he omitted to write the name in
8 the chart. C. S. was a male patient, and he was seen after the Board entered its Findings
9 of Fact, Conclusions of Law and Order on February 3, 1999.

10 51. Paragraph 13(E) of the Complaint alleges that Dr. Patton examined patient E. Z.
11 on March 23, 1999, and that he failed to write the name of the adult female in the chart.
12 Dr. Patton testified that a parent was present, but he omitted to write the name in the
13 chart. E. Z. was a male patient, and he was seen after the Board entered its Findings of
14 Fact, Conclusions of Law and Order on February 3, 1999.

15 NOT WRITING THE ADULT FEMALE'S NAME LEGIBLY IN THE CHART

16 52. Dr. Patton did not write legibly the name of the adult female in the following five
17 patient charts:

- 18 1. November 13, 1997, examination of patient S. D.
- 19 2. February 9, 1999, examination of patient G. I.
- 20 3. July 14, 1999, examination of patient N. W.
- 21 4. July 27, 1999, examination of patient J. V.
- 22 5. July 27, 1999, examination of patient D. V.

23 In each of these examinations, Dr. Patton recorded the initials of a person who,
24 according to his testimony, was present during the examination.

25 53. Paragraph 14(A) of the Complaint alleges that Dr. Patton examined patient S.
D., a female patient, on November 13, 1997, and that he failed to write legibly the name of
the adult female in the chart. It was the patient's mother who was present and whose
initials were recorded in the chart. Mr. Palmer verified that the mother was present during
the examination.

 54. Paragraph 14(B) of the Complaint alleges that Dr. Patton examined patient C.
B. on January 13, 1998, and that he failed to write legibly the name of the adult female in

1 the chart. Dr. Patton testified that he did not examine the patient on that date, and there
2 are no physical findings recorded in the chart for that date. Dr. Patton did, however, write
3 the name and initials of the patient's mother in other sections of the chart.

4 55. Paragraph 14(C) of the Complaint alleges that Dr. Patton examined patient G. I.
5 on February 9, 1999, and that he failed to write legibly the name of the adult female in the
6 chart. It was the patient's mother who was present and whose initials were recorded. The
7 mother initialed the chart "A. F."

8 56. Paragraph 14(D) of the Complaint alleges that Dr. Patton examined patient N.
9 W. on July 14, 1999, and that he failed to write legibly the name of the adult female in the
10 chart. Dr. Patton did not write the name of the adult female in the chart. The patient's
11 mother was present, and she initialed the chart "T. B."

12 57. Paragraph 14(E) of the Complaint alleges that Dr. Patton examined patient J. V.
13 on July 27, 1999, and that he failed to write legibly the name of the adult female in the
14 chart. His medical assistant, Ms. Diane Veach, was present, and her initials, but not her
15 name, were recorded. Ms. Veach initialed the chart "D. V."

16 58. Paragraph 14(F) of the Complaint alleges that Dr. Patton examined patient D.
17 V. on July 27, 1999, and that he failed to write legibly the name of the adult female in the
18 chart. His medical assistant, Ms. Veach, was present, and her initials, but not her name,
19 were recorded. Ms. Veach initialed the chart "D. V."

20 NOT RECORDING TIMELY THE ADULT FEMALE'S NAME IN THE CHART

21 59. Paragraph 15 of the Complaint alleges that Dr. Patton examined patient T. P.
22 on February 12, 1999, and he did not write the name of the adult female in the chart until
23 March 28, 1999, six weeks later. Dr. Patton testified that T. P.'s mother was present during
24 the examination, but he neglected to write her name in the chart at that time. He testified
25 he discovered this omission when preparing a discharge summary on March 28, 1999,
and he recorded the mother's name at that time. The entry of the mother's name in the
chart was dated March 28, 1999.

60. Dr. Patton testified he sees between 25 and 45 patients a day, five days a week
and every sixth weekend when on call. Forty-five patients would be "a busy winter day." *H.*
T. p. 317, ln. 10.

1 61. Dr. Patton believed that the Board's Findings of Fact, Conclusions of Law and
2 Order of February 3, 1999, superseded the Interim Order.

3 62. On June 30, 1999, Dr. Patton appeared before the Board to review his
4 compliance with both the Interim Order and the Order of Probation of February 3, 1999. At
5 that hearing, Dr. Patton advised the Board that he was following the Order of February 3,
6 1999, and no one had told him that he should not be following that Order, but instead the
Interim Order.

7 63. In July, 1999, Mr. Palmer informed Dr. Patton that a review of his office charts
8 showed Dr. Patton was not in compliance with the Interim Order. Dr. Patton advised Mr.
9 Palmer that the requirements had been changed by the Board's Order of Probation. Mr.
10 Palmer then told Dr. Patton that, because a motion for review had been filed, Dr. Patton
was required to comply with the Interim Order.

11 64. Following this discussion with Mr. Palmer, Dr. Patton consulted his attorney and
12 was told that Mr. Palmer was wrong, that the law had changed, and that he should
continue to obey the Order of Probation of February 3, 1999.

13 65. On July 22, 1999, Dr. Patton's attorney wrote to the Board to explain that the
14 Board's Order of February 3, 1999 - not the Interim Order - was in effect.

15 66. On July 24, 1999, Mr. Adams, the Board's Assistant Director for Regulation,
16 wrote a letter in response stating it was the Board's position that Dr. Patton was required
to comply with the Interim Order.

17 67. Dr. Patton testified that since he was advised of Mr. Adams' letter in August,
18 1999, Dr. Patton has attempted to comply with both the Interim Order and the Order of
19 Probation.

20 68. It appears that the Maryvale Hospital Medical Center believed that the adult
21 female chaperone requirement meant a licensed health professional. In a letter dated
March 15, 1999, the hospital's chief executive officer wrote to Dr. Patton:

22 "You are reminded to: (1) be accompanied by a female chaperone when
23 treating patients at Maryvale Hospital Medical Center and, (2) request the
24 female chaperone (RN or LPN) to document and sign the patient record
25

1 verifying you were accompanied during the patient examination." (Emphasis
2 added.) *Dr. Patton's Exhibit No. 5.*

3 CONCLUSIONS OF LAW

4 1. The Board has authority to enter an appropriate order in this case, as Dr. Patton
5 holds a license issued by the Board. *A.R.S. §§ 32-1401 and 32-1403.*

6 2. The State of Arizona has the burden of proof, and the standard of proof on all
7 issues is the preponderance of the evidence. *Culpepper v. State, 187 Ariz. 431, 930 P.2d*
8 *508 (App. 1996); Rule R2-9-119, supra.* A "preponderance of the evidence is such proof
9 as convinces the trier of fact that the contention is more probably true than not." *Morris K.*
10 *Udall, Arizona Law of Evidence, § 5 (1960).* It "is evidence which is of greater weight or
11 more convincing than the evidence which is offered in opposition to it; that is, evidence
12 which as a whole shows that the fact sought to be proved is more probable than not."
13 *BLACK'S LAW DICTIONARY 1182 (6th ed. 1990).*

14 3. The Order of Probation of February 3, 1999, entered in Investigative Case No.
15 96F-9428-MDX is not a final decision of the Board, as the State's Motion for Review and
16 Amendment to Motion for Review await the Board's determination. *Rule R4-16-102(B)(D)*
17 *and (G), supra.* The Board has not resolved all contested issues before it, and has not
18 issued a final decision in Investigative Case No. 96F-9428 which is subject to judicial
19 review. *A.R.S. § 41-1092.09(B)²; see Southwestern Paint & Varnish Co. v. Arizona Dept.*
20 *of Environmental Quality, 194 Ariz. 22, 976 P.2d 872 (1999).*

21 4. The Interim Order which became effective on February 7, 1996, remains in
22 effect. The Board's February 3, 1999, Order of Probation did not, as a matter of law,
23 supersede the Interim Order.

24 5. *A.R.S. §32-1401(25)(q) and -(25)(r)* state:

25 "25. 'Unprofessional conduct' includes the following, whether occurring in this
state or elsewhere:

² *A.R.S. § 41-1092.09(B)* states in pertinent part, "A party to an appealable agency action of or contested case with a self-supporting regulatory board shall exhaust the party's administrative remedies by filing a motion for rehearing or review within thirty days after the service of the

1 (q) Any conduct or practice which is or might be harmful or dangerous to the
2 health of the patient or the public.

3 (r) Violating a formal order, probation, consent agreement or stipulation
4 issued or entered into by the board or its executive director under the
5 provisions of this chapter."

6
7 6. The preponderance of the evidence shows that Dr. Patton did not examine any of
8 the patients named in the Board's Complaint without another person being present. A
9 person, most often the patient's mother but on two occasions a medical assistant, was
10 present during the examinations described in the Board's Complaint. These mothers and
11 the medical assistant are presumed to have been female adults at the time of the
12 examinations.

13 7. The following acts and omissions, more fully described in the findings of fact,
14 constitute 34 acts of unprofessional conduct pursuant to A.R.S. § 32-1401(25)(r), as they
15 violated the Interim Order, a formal order of the Board:

16 a. Dr. Patton did not write the name of the adult female or the person present during
17 the examination of a patient on 28 occasions. Although a person was present during the
18 examinations, according to Dr. Patton, he did not record their names in the patients'
19 charts.

20 b. Dr. Patton did not legibly write the name of the adult female or the person
21 present during the examination on five occasions. Although he initialed the charts, the
22 Interim Order required the "name" of the adult female.

23 c. Dr. Patton did not contemporaneously record the name of the adult female or the
24 person present during one patient examination. The delay of six weeks to record the name
25 was not reasonable and violated the terms of the Interim Order.

8. These acts and omissions do not constitute violations of A.R.S. § 32-1401(25)(q),
as they do not constitute "conduct or practice which is or might be harmful or dangerous to
the health of the patient or the public." A.R.S. § 32-1401(25)(q).

administrative decision that is subject to rehearing or review **in order to be eligible for judicial review** pursuant to title 12, chapter 7, article 6." (Emphasis added.)

1 9. Dr. Patton's violations of A.R.S. § 32-1401(25)(r) constitute grounds on which the
2 Board may discipline Dr. Patton for unprofessional conduct pursuant to A.R.S. § 32-1451.
3 A.R.S. §§ 32-1401(25)(r) and 32-1451(L).

4 10. The facts a person was present during the examinations, either the patient's
5 mother or, in two cases, a medical assistant (both presumed to be female adults), and the
6 low number of violations found relative to the level of Dr. Patton's practice, are mitigating
7 factors. No other mitigating factors exist.

8 11. The evidence supports a requisite that the adult female chaperone should be a
9 licensed health professional. A chaperone should be a qualified and independent
10 individual. Further, confusion would be eliminated.

11 **STIPULATED ORDER**

12 The Order set forth in the Board's Findings of Fact, Conclusions of Law and Order
13 dated February 3, 1999, is hereby vacated, and in its place the Board hereby issues the
14 following Order:

15 1. Dr. Patton's license to practice allopathic medicine is revoked and the revocation
16 is stayed. If Dr. Patton violates any term of the probation in any respect, the Board, after
17 giving notice and the opportunity to be heard, shall terminate the probation and carry out
18 the disciplinary order revoking Dr. Patton's license. If an investigation involving an alleged
19 violation of the probation is initiated but not resolved prior to the termination of the
20 probation, the Board shall have continuing jurisdiction until the matter is final and the
21 period of probation shall extend until the matter is final.

22 2. Dr. Patton is placed on probation for ten (10) years commencing February 3,
23 1999, with the following conditions:

24 A. Dr. Patton shall have a regulated healthcare professional present
25 when he examines any female patient between the ages of 2 and 18 years of age. The
healthcare professional shall independently and legibly write his/her full name in the
patient's chart at the time of the examination.

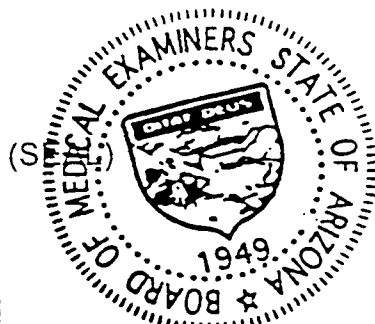
B. Dr. Patton shall practice in a structured group setting.

C. Dr. Patton shall not examine the breasts or genitalia of any female
patient 10 years of age and older.

1 D. Dr. Patton shall undergo at least two years of psychotherapy from the
2 date of this agreement by a board staff pre-approved therapist who shall provide quarterly
3 reports to the Board concerning the progress in therapy, and an annual report concerning
4 Dr. Patton's ability to continue the practice of medicine. The treating therapist shall report
5 Dr. Patton's attendance record at both individual and group therapy sessions. Dr. Patton
6 shall abide by any psychotherapy or therapy recommendations that the treating therapist
7 recommends at the end of the two-year period. Dr. Patton shall pay all expenses of the
therapy and evaluations.

8 3. The Interim Order dated January 19, 1996 is hereby vacated.

9 DATED this 28th day of April, 2000.



10 BOARD OF MEDICAL EXAMINERS
11 OF THE STATE OF ARIZONA

12 By: Claudia Foutz
13 CLAUDIA FOUTZ
Executive Director

14 Original of the foregoing filed this
15 28 day of April, 2000, with:

16 The Arizona Board of Medical Examiners
17 1651 East Morten, Suite 210
Phoenix, AZ 85020

18 Copy of the foregoing mailed by Certified
19 Mail this 28 day of April, 2000, to:

20 Dr. Mark Patton
21 (address of record)

22 Copy of the foregoing mailed this
23 28 day of April, 2000, to:

24 Charles E. Buri
25 Friedl, Richter & Buri
6909 E. Greenway Parkway, Suite 200
Scottsdale, AZ 85254-2131

1 Tom Dennis
2 Assistant Attorney General
3 Solicitor General's Office
4 1275 W. Washington
5 Phoenix, AZ 85007

6 Marc Harris
7 Assistant Attorney General
8 1275 W. Washington
9 Phoenix, AZ 85007

10 
11 _____
12 Board Operations
13
14
15
16
17
18
19
20
21
22
23
24
25